

This Opinion is not a  
Precedent of the TTAB

Mailed: October 18, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

—  
Trademark Trial and Appeal Board

—  
*In re Soho Beats, LLC*

—  
Serial No. 88454219

—  
Soho Beats, LLC (pro se), represented by  
Khalid Mian, Member.

Laura Golden, Trademark Examining Attorney, Law Office 103,  
Stacy Wahlberg, Managing Attorney.

—  
Before Zervas, Bergsman and Allard,  
Administrative Trademark Judges.

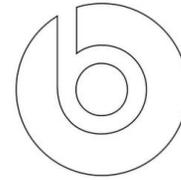
Opinion by Zervas, Administrative Trademark Judge:

Soho Beats, LLC (“Applicant”) has filed an application under Section 1(b) of the  
Trademark Act, 15 U.S.C. § 1051(b), for registration on the Principal Register of the



mark for “audio speakers; batteries and battery chargers; earphones; headphones; virtual reality headsets; game headphones” in International Class 9.<sup>1</sup>

The Examining Attorney refused registration pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. § 1052(d), on the ground that Applicant’s mark is likely to cause confusion with the several different marks which are the subject of ten



registrations owned by the same entity, including the mark registered on the Principal Register for “headphones” in International Class 9.<sup>2</sup>

After the refusal was made final, Applicant appealed and filed a request for reconsideration. The Board suspended the appeal and remanded the application to the Examining Attorney for consideration of the request for reconsideration. The Examining Attorney denied the request for reconsideration, the appeal resumed and Applicant and the Examining Attorney filed briefs. We affirm the refusal to register.

Our determination under Section 2(d) of the Trademark Act is based on an analysis of the probative facts in evidence that are relevant to the factors bearing on

---

<sup>1</sup> Application Serial No. 88454219, filed on May 31, 2019. The mark is described as “consist[ing] of a lower case letter ‘b’ that is inset in a circle. The vertical line of the letter ‘b’ cuts to the edge of the circle.” Color is not claimed as a feature of the mark.

<sup>2</sup> Registration No. 3881677, registered November 23, 2010, renewed. The mark is described as consisting of a lower-case letter “B” in a circle, and color is not claimed as a feature of the mark.

a likelihood of confusion. *See In re E.I. DuPont DeNemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973) (“*DuPont*”); *see also Palm Bay Imps., Inc. v. Veuve Clicquot Ponsardin Maison Fondee En 1772*, 396 F.3d 1369, 73 USPQ2d 1689 (Fed. Cir. 2005); *In re Majestic Distilling Co.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In considering the evidence of record on these factors, we keep in mind that “[t]he fundamental inquiry mandated by § 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.” *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

We consider each *DuPont* factor that is relevant or for which there is argument and evidence of record. *See In re Guild Mortg. Co.*, 912 F.3d 1376, 129 USPQ2d 1160, 1162-63 (Fed. Cir. 2019). “Not all of the [*DuPont*] factors are relevant to every case, and only factors of significance to the particular mark need be considered.” *Coach Servs., Inc. v. Triumph Learning LLC*, 668 F.3d 1356, 101 USPQ2d 1713, 1719 (Fed. Cir. 2012) (quoting *In re Mighty Leaf Tea*, 601 F.3d 1342, 94 USPQ2d 1257, 1259 (Fed. Cir. 2010)).

In addition, we keep in mind that registration must be refused in a particular class if Applicant’s mark for any of its identified goods or services in that class is likely to cause confusion with the Registrant’s mark for any of its identified goods. *See SquirtCo v. Tomy Corp.*, 697 F.2d 1038, 216 USPQ 937, 938-39 (Fed. Cir. 1983) (holding that a single good from among several may sustain a finding of likelihood of confusion); *Tuxedo Monopoly, Inc. v. Gen. Mills Fun Grp.*, 648 F.2d 1335,

209 USPQ 986, 988 (CCPA 1981) (likelihood of confusion must be found if there is likely to be confusion with respect to any item that comes within the identification of goods or services in the application). We therefore focus on Registration No. 3881677 which identifies “headphones,” one of the goods found in Applicant’s identification of goods. *See also In re St. Julian Wine Co.*, 2020 USPQ2d 10595, at \*3 (TTAB 2020); *North Face Apparel Corp. v. Sanyang Indus. Co.*, 116 USPQ2d 1217, 1225 (TTAB 2015); *In re Max Capital Grp. Ltd.*, 93 USPQ2d 1243, 1245 (TTAB 2010).

a. Similarity of the Goods, Trade Channels and Classes of Consumers

We evaluate the relatedness of the goods based on their identifications in the subject application and cited registration. *Stone Lion Capital Partners, LP v. Lion Capital LLP*, 746 F.3d 1317, 110 USPQ2d 1157, 1162 (Fed. Cir. 2014); *see also Octocom Sys. Inc. v. Hous. Comput. Servs. Inc.*, 918 F.2d 937, 16 USPQ2d 1783, 1787 (Fed. Cir. 1990) (“The authority is legion that the question of registrability of an applicant’s mark must be decided on the basis of the identification of goods set forth in the application regardless of what the record may reveal as to the particular nature of an applicant’s goods, the particular channels of trade or the class of purchasers to which the sales of goods are directed.”).

The goods of the application and the registration – headphones – are identical. The involved goods are identical in part

Turning to the trade channels, in the absence of limitations as to channels of trade or classes of purchasers in the identified goods of the application and the cited registration, we must presume that such goods travel in all of the normal trade

channels, and are available to all potential classes of consumers of such goods. *In re I-Coat Co., LLC*, 126 USPQ2d 1730, 1737-38 (TTAB 2018)) (citing *Citigroup Inc. v. Capital City Bank Grp. Inc.*, 637 F.3d 1344, 98 USPQ2d 1253, 1261 (Fed. Cir. 2011); *In re Jump Designs LLC*, 80 USPQ2d 1370, 1374 (TTAB 2006); *In re Elbaum*, 211 USPQ 639, 640 (TTAB 1981)). Because Applicant's and Registrant's goods are identical in part, we presume that the trade channels and classes of consumers for those goods are the same. The common consumers for Applicant's and Registrant's goods are members of the general public.

The *DuPont* factors regarding the similarity of the goods, trade channels and classes of consumers weigh heavily in favor of finding a likelihood of confusion.

#### b. Similarities of the Marks

We now consider whether Applicant's and Registrant's marks are similar when viewed in their entirety in terms of appearance, sound, connotation and commercial impression. *See Stone Lion*, 110 USPQ2d at 1160 (quoting *Palm Bay Imps.*, 73 USPQ2d at 1689). Applicant's and Registrant's marks are identical.

The *DuPont* factor regarding the similarity of the marks also weighs heavily in favor of finding a likelihood of confusion.

#### c. Applicant's Arguments

Applicant does not address the *DuPont* factors – it argues:

- i. The Registrant/Owner of the cited registrations has ceased to exist as an operating business.
- ii. The cited registrations have been procured or maintained by an entity other than the Registrant/Owner by impersonating as the Registrant/Owner of the marks.

iii. Since the cited registrations are products of “Fraud by Impersonation” by a non- Registrant/non-Owner; therefore, neither do they enjoy the presumptions and protections provided by the Trademark Act 1946 to a lawful Registrant/Owner nor does their cancellation require proceedings before the TTAB.<sup>3</sup>

Applicant seeks the following:

[A]pplicant respectfully requests that the criminal activity of Apple’s officers, directors, attorneys and other employees who planned, authorized, perpetrated, abetted, connived or acquiesced in commission of any offence/criminal act as stated above, may kindly be formally investigated; the offenders be prosecuted and punished to the maximum extent of law; the cited registrations and pending applications apparently belonging to Beats Electronics, LLC may kindly be annulled and revoked as the products of crime; the Trademark Application Serial # 88454219 may kindly be accepted and applicant’s mark may kindly be registered.<sup>4</sup>

Section 7(b) of the Trademark Act, 15 U.S.C. §1057(b), provides that a certificate of registration on the Principal Register shall be prima facie evidence of the validity of the registration. During ex parte prosecution, an applicant will not be heard on matters that constitute a collateral attack on cited registrations. *See In re Detroit Athletic Co.*, 903 F.3d 1297, 128 USPQ2d 1047, 1053 (Fed. Cir. 2018); *In re Dixie Rests., Inc.*, 105 F.3d 1405, 41 USPQ2d 1531, 1534-35 (Fed. Cir. 1997); *In re Fiesta Palms, LLC*, 85 USPQ2d 1360, 1363 (TTAB 2007). Because Applicant’s arguments collaterally attack the validity of the cited registration, they are not further considered.

---

<sup>3</sup> 6 TTABVUE 4-5.

<sup>4</sup> *Id.* at 18.

d. Conclusion

We have found Applicant's and Registrant's goods are identical in part and presume the trade channels and classes of consumers are identical. In addition, we have found the marks to be identical. We therefore conclude that Applicant's mark for "audio speakers; batteries and battery chargers; earphones; headphones; virtual reality headsets; game headphones" is likely be confused with Registrant's mark for "headphones."

**Decision:** The refusal to register under Section 2(d) is affirmed.